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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,811	11/04/2005	Joerg Schroter	2002P01599WOUS	6353

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EXAMINER

MULLER, BRYAN R

ART UNIT	PAPER NUMBER
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3723

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/540,811	Applicant(s) SCHROTER, JOERG	
	Examiner BRYAN R. MULLER	Art Unit 3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-26 is/are pending in the application.
- 4a) Of the above claim(s) 17-26, 30-34 and 36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-16, 27-29, 35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 17-26, 30-34 and 36 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/19/2007.

Claim Objections

2. Claim 35 is objected to because of the following informalities: the term “means for coupling” is unclear because it appears to be an attempt to invoke 112, sixth paragraph. However, the applicant does not disclose in the specification any specific “means for coupling” for coupling the handle to the extension means for the elected species of Fig. 1. Therefore, it is unclear what the applicant is referring to as the “means for coupling” for the elected embodiment. The only disclosure for the elected embodiment regarding the handle being attached to the extension means discloses that they are connected but does not specify how. Thus, it is suggested that the applicant amend the claim to remove the terms “means for coupling” and disclose that the handle is coupled to the extension means, to clarify the claim, and the claim will be treated as such for the sake of the current Office Action.

Claim Rejections - 35 USC § 102103

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 14-16, 27 and 35 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Persson (3,999,640).

6. In reference to claim 14, Persson discloses a vacuum cleaner comprising a body (10) having a handle movable between a position for storage and a position for supporting the vacuum cleaner during carrying by a user (lid 16 is inherently capable of being used as a handle to pick-up or move the vacuum cleaner when it is in the extended position shown in Fig. 2), a cable winding device (11) disposed within the body and used for winding and unwinding a power cable (13) which is provided with an electric plug (14) for connection to an electric power network, and an auxiliary device (21) operatively associated with said handle for moving said electric plug from a first position (shown in Fig. 1), where the power cable is wound to the shortest length thereof, into a second position (Fig. 2) wherein at least one of said power cable and electric plug can be taken by hand for unwinding the power cable, wherein said auxiliary device is activated when said handle is moved from said storage position. However,

Persson shows the handle in a generally *vertical* position for storage and a generally *horizontal* position for carrying. As claimed, the terms horizontal and vertical are completely relative to the position of the apparatus of Persson, wherein the apparatus may inherently be rotated approximately 90 degrees such that the handle in a generally *horizontal* position for storage and a generally *vertical* position for carrying.

Alternatively, it would have been obvious to one of ordinary skill in the art at the time the invention was made that it would be desirable to provide the same cord winding/retrieving structure disclosed by Persson to vacuum cleaners having different structure, wherein it may be more desirable to position the cord retrieving structure on the top of the vacuum cleaner body, to make it easier for a user to reach the cord. In this case, it further would have been obvious that the handle (16) will be in a generally *horizontal* position for storage and a generally *vertical* position for carrying, wherein the handle portion (16) would still be inherently capable of functioning as a handle in that the portion may at least be used to support the vacuum cleaner.

7. In reference to claim 15, Persson further discloses that the auxiliary device comprises a pick-up element (21), which when the handle is moved from said generally horizontal storage position (home position shown in Fig. 1) moves the electric plug into the second position (Fig. 2).

8. In reference to claim 16, Persson further discloses that the pick-up element (21) is attached to the handle (16).

9. In reference to claim 27, Persson discloses a vacuum cleaner comprising: a vacuum cleaner body (10); a power supply cable (13) connected to the body and having

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an electric plug (14) disposed at an end of the power supply cable; a handle (16; inherently capable of being used as a handle, as discussed supra) connected to the body for movement with respect to the body between an inoperative position (Fig. 1) and a carrying position (Fig. 2); and an auxiliary device (21) engaging the electric plug and being movable with respect to the body between a first position (Fig. 1), in which the electric plug is retracted adjacent the body, and a second position (Fig. 2), in which the auxiliary device extends the electric plug outwardly away from the body, the auxiliary device being coupled to the handle and being movable between the first and second positions in response to movement of the handle between the inoperative and carrying positions. As discussed supra, Persson shows the handle in a generally *vertical* position for storage and a generally *horizontal* position for carrying. As claimed, the terms horizontal and vertical are completely relative to the position of the apparatus of Persson, wherein the apparatus may inherently be rotated approximately 90 degrees such that the handle in a generally *horizontal* position for storage and a generally *vertical* position for carrying. Alternatively, it would have been obvious to one of ordinary skill in the art at the time the invention was made that it would be desirable to provide the same cord winding/retrieving structure disclosed by Persson to vacuum cleaners having different structure, wherein it may be more desirable to position the cord retrieving structure on the top of the vacuum cleaner body, to make it easier for a user to reach the cord. In this case, it further would have been obvious that the handle (16) will be in a generally *horizontal* position for storage and a generally *vertical* position for carrying, wherein the handle portion (16) would still be inherently capable of

functioning as a handle in that the portion may at least be used to support the vacuum cleaner.

10. In reference to claim 35, Persson discloses a vacuum cleaner comprising: a vacuum cleaner body (10); a power supply cable (13) connected to the body and having an electric plug (14) disposed at an end of the power supply cable opposite the body; a cable winding device (11) disposed within the body for winding and unwinding the power supply cable; a handle (16; inherently capable of being used as a handle, as discussed supra) connected to the body for movement with respect to the body between an inoperative position (Fig. 1) and a carrying position (Fig. 2); an extension means (21; considered to be a functional and structural equivalent to the applicant's disclosed "extension means") for engaging the electric plug and being movable with respect to the body between a first position (Fig. 1), in which the electric plug is retracted adjacent the body, and a second position (Fig. 2), in which the extension means extends the electric plug outwardly away from the body; and a coupling means coupling the handle to the extension means for moving the extension means in response to movement of the mobile handle. As discussed supra, Persson shows the handle in a generally *vertical* position for storage and a generally *horizontal* position for carrying. As claimed, the terms horizontal and vertical are completely relative to the position of the apparatus of Persson, wherein the apparatus may inherently be rotated approximately 90 degrees such that the handle in a generally *horizontal* position for storage and a generally *vertical* position for carrying. Alternatively, it would have been obvious to one of ordinary skill in the art at the time the invention was made that it would be desirable to

provide the same cord winding/retrieving structure disclosed by Persson to vacuum cleaners having different structure, wherein it may be more desirable to position the cord retrieving structure on the top of the vacuum cleaner body, to make it easier for a user to reach the cord. In this case, it further would have been obvious that the handle (16) will be in a generally *horizontal* position for storage and a generally *vertical* position for carrying, wherein the handle portion (16) would still be inherently capable of functioning as a handle in that the portion may at least be used to support the vacuum cleaner.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Persson (3,999,640) in view of Clowers et al. (4,106,165).

13. In reference to claim 28, Persson discloses the vacuum cleaner of claim 27, as discussed supra, and further discloses that the auxiliary pick-up device (21) comprises a hook-shaped pick-up element defining a hole (22) therein for receiving the power supply cable, the pick-up element engaging the electric plug and being movable between the first and second positions. The pick-up element is hook-shaped in that the term "hook" is defined as "a curved or angular piece of metal or other hard substance for catching, pulling,

holding, or suspending something"¹ wherein the pick-up element clearly is angular, in that the element angles at the pivot point (at attachment point with portion 20) toward the handle (16) for connection with the handle, thus making the element an angular piece that is used for catching, pulling and holding the plug. Further, the element is obviously a hard substance, being formed as part of the vacuum housing and designed to withstand impact from the plug being returned to the element by the cable winding device (11). Therefore, the pick-up element reads on the definition of "hook-shaped". However, Persson fails to disclose that the hole (22) in the pick-up element is a slot. Clowers discloses an element that is designed to catch and hold a plug in a desired position, wherein the element comprises a slot (50) for the power cable to pass through, which also allows a user to easily remove the cable from the element if necessary, which would allow for easier assembly because a the slot would not require the entire power cable to be threaded through a hole or require attachment of the plug to the power cable after passing the cable through the hole, and will also make it easier to remove the cord from the element if the cord or element needs to be removed or replaced for maintenance or repair. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to form the hole (22) of Persson as a slot, as taught by Clowers, to allow a user to easily position the cable within the pick-up element or remove the cable from the pick-up element.

14. In reference to claim 29, Persson further discloses that the pick-up element (21) is fixed to the handle (16).

¹ *Dictionary.com Unabridged (v 1.1)*

Response to Arguments

15. Applicant's arguments filed 4/18/2008 have been fully considered but they are not persuasive. The applicant argues that the lid (16) of Persson would not be inherently capable of use as a handle because it is too small, would likely be damaged and is not intended for use as a handle. However, the claim does not include any size requirement for the handle, there is no teaching that the lid (16) would be damaged if used as a handle, and although Persson does not disclose the lid (16) as being intended as a handle, the structure is inherently capable of use as a handle, either to move, lift, or stabilize the vacuum cleaner during lifting. Further, the claim limitation that the handle is used to support the vacuum cleaner during carrying (claim 1) is merely an intended use for the "handle", whereas the claim does not actual require that the handle may support the entire weight of the vacuum cleaner. The claim only requires **supporting** the vacuum during carrying, wherein the lid (16) is clearly capable of functioning as a handle by use to stabilize the vacuum while the majority of the weight may be held at another portion of the body. The "term" handle does not provide any further structure to the claim than the structure provided by the lid (16) of Persson. The applicant also argues that the lid (handle 16) of Persson is not in a horizontal position for storage and a vertical position for carrying. However, as discussed supra, the terms "vertical" and "horizontal" are relative terms that are determined by the orientation of the apparatus. As discussed supra, it would have been obvious that the apparatus of

Persson may be rotated from the position shown in the drawings such that lid (handle 16) of Persson is in a horizontal position for storage and a vertical position for carrying.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Descarries (2,961,688) and Masakuza (JP 05-207945.) both disclose vacuum cleaners having similar structure and/or function as the applicant's claimed invention and Huber (2,979,576) discloses an auxiliary element for moving an electric plug out of a housing for grasping by a user that is similar to the auxiliary device disclosed by the applicant.

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRYAN R. MULLER whose telephone number is (571)272-4489. The examiner can normally be reached on Monday thru Thursday and second Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail III can be reached on (571) 272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/B. R. M./
Examiner, Art Unit 3723
7/9/2008

/Joseph J. Hail, III/
Supervisory Patent Examiner, Art Unit 3723